

Bill No. 26-99  
Concerning: Collective Bargaining -  
Amendments  
Revised: 3-3-00 Draft No. 5  
Introduced: September 14, 1999  
Enacted: March 7, 2000  
Executive: March 16, 2000  
Effective: June 15, 2000  
Sunset Date: None  
Ch. 2 Laws of Mont. Co. 2000

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmembers Subin and Silverman

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### AN ACT to:

- (1) modify certain functions of the Labor Relations Administrator;
- (2) revise the process for certifying employee organizations;
- (3) revise the timetable for certain collective bargaining actions;
- (4) require binding arbitration of certain collective bargaining agreements; and
- (5) generally amend the law governing collective bargaining for certain County employees.

By amending

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Sections 33-103, 33-106, and 33-108

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. Sections 33-103, 33-106, and 33-108 are amended as follows:**

**33-103. Labor Relations Administrator.**

(a) [There is established the position of] A Labor Relations Administrator[, to provide for the effective implementation and administration of] must be appointed to effectively administer this Article [concerning] as it governs selection, certification and decertification procedures, prohibited practices, and the choice of a mediator/fact-finder. The [Labor Relations] Administrator [shall exercise the following powers and perform the following duties and functions] must:

\* \* \*

(8) Determine any issue regarding the negotiability of any collective bargaining proposal.

[(8)] (9) Exercise any other powers and perform any other duties and functions [as may be] specified in this Article.

**33-106 Selection, certification, and decertification procedures.**

(a) The certification or decertification of an employee organization as the representative of a unit for [the purpose of] collective bargaining [shall be initiated in accordance with] must comply with the following procedures:

\* \* \*

(5) If a different employee organization is certified as the result of an election carried out under subsection (b)(8), that organization must be treated in all respects as a successor in interest and party to any collective bargaining agreement that the previous employee organization was a party to.

(b) \* \* \*

(8) If a properly supported and timely filed petition to decertify an existing certified employee organization, and a properly supported and timely filed petition to certify another employee organization, are filed during the same time period under subsection (a)(3) or (a)(4), one election must be held to determine which organization, if any, the employees in the unit desire to represent them. The election ballot must contain, as choices to be made by the voter, the names of the petitioning and certified employee organizations, and a choice that the employee does not desire to be represented by any of the named employee organizations. All other applicable requirements and procedures for the election must be followed.

\* \* \*

**33-108. Bargaining, impasse, ~~[[fact-finding,]]~~ and legislative procedures.**

- (a) Collective bargaining ~~[shall]~~ must begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and ~~[shall]~~ must be finished on or before ~~[January]~~ February ~~[[15]]~~ 1. [The resolution of a bargaining impasse or fact-finding shall be finished by February 1.]
- (b) Any provision for automatic renewal or extension of a collective bargaining agreement is void. An agreement is not valid if it extends for less than one year or for more than 3 years. All agreements ~~[become effective]~~ take effect July 1 and end June 30.
- (c) A collective bargaining agreement ~~[becomes effective]~~ takes effect only after ratification by the employer and ~~[by]~~ the certified representative. The certified representative may ~~[provide]~~ adopt its own ~~[rules for]~~ ratification procedures.
- (d) Before November 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator ~~[shall]~~ must appoint a mediator/~~[fact-finder]~~ arbitrator, who may be a person recommended ~~[to her]~~ by both parties. The mediator/~~[fact-finder]~~ arbitrator ~~[shall]~~ must be available ~~[during the~~

period] from January 2 to [February 1] June 30. Fees and expenses of the mediator/[fact-finder] arbitrator [shall] must be shared equally by the employer and the certified representative.

- (e) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the mediator/[fact-finder] arbitrator, or the parties may jointly request [his] those services before [declaration of] an impasse is declared. If the parties do not reach an agreement by [January] February ~~[[15]]~~ 1, an impasse exists. Any issue regarding the negotiability of any bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.
- (2) ~~[[This]]~~ Any dispute, except a dispute involving the negotiability of a bargaining proposal, [shall] must be submitted to the mediator/[fact-finder] arbitrator whenever an impasse has been reached, or [before that] as provided in subsection (e)(1). The mediator/[fact-finder] arbitrator [shall] must engage in mediation by bringing the parties together voluntarily under such favorable circumstances as will [tend to bring about the] encourage settlement of the dispute.

(3) If [and when] the mediator/[fact-finder] arbitrator finds, in [his] the mediator/arbitrator's sole discretion, that the parties are at a bona fide impasse, [he shall implement the following fact-finding process:] or as of February [[15]] 1 when an impasse is automatically reached, whichever occurs earlier, the dispute must be submitted to binding arbitration.

[(a.) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.]

(f)(1) If binding arbitration is invoked, the mediator/arbitrator must require each party to submit a final offer, which must consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the mediator/arbitrator directs. If only complete package proposals are required, the mediator/arbitrator must require the parties to submit jointly a memorandum of all items previously agreed on. [[The final offer submitted by each party must separately identify economic and non-economic proposals. Economic proposals must include only salary and wages (including wage premiums or differentials, allowances, merit increments, and

amounts allocated for cash awards), pension and other  
 [[welfare]] retirement benefits, and employee benefits such as  
 [[health]] insurance. The mediator/arbitrator must decide any  
 issue regarding whether a particular proposal is economic or  
 non-economic.]]

[(b.)] (2) [He] The mediator/arbitrator may require the parties to submit  
 oral or written evidence [or make oral or written] and  
 arguments in support of their proposals. [He] The  
 mediator/arbitrator may hold a hearing for this purpose at a  
 time, date, and place selected by [him] the mediator/arbitrator.  
 This hearing [shall] must not be open to the public.

[(c.)] (3) [On or before February 1, the mediator/fact-finder shall issue a  
 report of his findings of fact and recommendations on those  
 matters still in dispute between the parties. The report shall be  
 submitted to the parties but shall not be made public at this  
 time.]

On or before [[March 1]] February 15, the mediator/arbitrator  
 must select, as a whole, the more reasonable of [[(A)]] the final  
 [[economic]] offers submitted by the parties[, and (B) the final  
 non-economic offers submitted by the parties]]. [[With regard

120 to the economic offers, the]] The mediator/arbitrator must not  
 121 compromise or alter a final offer. The mediator/arbitrator must  
 122 not consider or receive any argument or evidence related to the  
 123 history of collective bargaining in the immediate dispute,  
 124 including any previous settlement offer not contained in the  
 125 final offers. However, the mediator/arbitrator must consider all  
 126 previously agreed-on [[economic]] items, integrated with the  
 127 disputed [[economic]] items, to decide which [[economic]]  
 128 offer is the most reasonable. [[The mediator/arbitrator must  
 129 also decide which of each of the parties' non-economic  
 130 proposals is the most reasonable under all the circumstances.  
 131 The mediator/arbitrator may compromise, alter, or reject any  
 132 non-economic proposal.]]

133 [(d.)] (4) In making [findings of fact and recommendations] a  
 134 determination under this subsection, the mediator/[fact-finder]  
 135 arbitrator may [take into account] consider only the following  
 136 factors:

137 [(i)] (A) Past collective bargaining agreements between the  
 138 parties, including the past bargaining history that led to  
 139 the agreements, or the pre-collective bargaining history



of employee wages, hours, benefits, and working  
conditions.

[(ii)] (B) Comparison of wages, hours, benefits, and conditions of  
employment of similar employees of other public  
employers in the Washington Metropolitan Area and in  
Maryland.

[(iii)](C) Comparison of wages, hours, benefits, and conditions of  
employment of other Montgomery County personnel.

[(iv)] (D) Wages, benefits, hours, and other working conditions of  
similar employees of private employers in Montgomery  
County.

[(v)] (E) The interest and welfare of the public.

[(vi)] (F) The ability of the employer to finance economic  
adjustments, and the effect of the adjustments [upon] on  
the normal standard of public services provided by the  
employer.

(5) The [[economic [[offer]] and non-economic offers]] offer  
selected by the mediator/arbitrator, [[together with the  
mediator/arbitrator's conclusion on each non-economic  
proposal,]] integrated with all previously agreed on items, [[is]]

160                   ~~[[comprise]]~~ is the final agreement between the employer and  
 161                   the certified representative, need not be ratified by any party,  
 162                   and [[has]] [[have]] has the effect of a contract ratified by the  
 163                   parties under subsection (c). The parties must execute the  
 164                   agreement, and any provision which requires action in the  
 165                   County budget must be included in the budget which the  
 166                   employer submits to the County Council.

167           [(f)   After receiving the report of the mediator/fact-finder, the parties shall  
 168                   meet again to bargain. If 10 days after the parties receive the report  
 169                   they have not reached full agreement, or if either party does not  
 170                   accept, in whole or in part, the recommendations of the mediator-fact-  
 171                   finder, the report of the mediator-fact-finder, with recommendations  
 172                   on agreed items deleted, shall be made public by sending it to the  
 173                   Council. The mediator/fact-finder shall also send the Council the joint  
 174                   memorandum of items agreed upon, up-dated with any items later  
 175                   agreed upon. The parties shall also send to the Council separate  
 176                   memoranda stating their positions on matters still in dispute.]

177           (g)   The ~~[[budget that the]]~~ employer ~~[[submits]]~~ must submit to the  
 178                   Council [shall] ~~[[must~~ include the items that have been agreed to, as  
 179                   well as the employer's position on matters still in dispute. Any agreed

or disputed]] any term or condition [[submitted to the Council]] of the  
collective bargaining agreement that requires an appropriation of  
funds, or the enactment[, repeal, or modification] or adoption of any  
County law or regulation, or which has or may have a present or  
future fiscal impact[[, may be accepted or rejected in whole or in part  
by the Council]]. [Such terms or conditions shall be identified to the  
Council by either or both parties.] The employer must expressly  
identify to the Council and the certified representative any term or  
condition that requires Council review. The employer [shall] must  
make a good faith effort to have the Council [[take action to  
implement]] approve [any term or condition to which the parties have  
agreed] all terms of the final agreement that require Council review.

(h) The Council may hold a public hearing to enable the parties and the  
public to testify on the agreement [and the recommendations for  
resolving bargaining disputes].

(i) The Council may accept or reject all or part of any term or condition  
that requires Council review under subsection (g). On or before May  
1, the Council [shall] must indicate by resolution its intention to  
appropriate funds for or otherwise implement the [items that have  
been agreed to] [[agreement]] items that require Council review or its

intention not to do so, and [shall] must state its reasons for any intent to reject any [items of the kind specified in subsection (g) that have been agreed to] ~~[[item of the final agreement]]~~ such item. [The Council shall also indicate by resolution its position on disputed matters which could require an appropriation of funds or enactment, repeal, or modification of any County law or regulation, or which have present or future fiscal impact.]

- (j) [Then] If the Council indicates its intention to reject any item ~~[[of the final agreement]]~~ that requires Council review, the Council [shall] must designate a representative to meet with the parties and present the Council's views in the parties' further negotiation on [disputed matters and/or agreed upon] ~~[[matters]]~~ items that the Council has indicated its intention to reject. This representative must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may at this time initiate impasse procedures under this Section. The parties must submit the results of the negotiation, whether a complete or a partial agreement, [shall be submitted] to the Council on or before May 10. The Council then must consider the

agreement as renegotiated by the parties and indicate by resolution its intention to appropriate funds for or otherwise implement the agreement, or its intention not to do so.

(k) Any agreement [shall] must provide for automatic reduction or elimination of wage [and/]or benefits adjustments if:

(1) The Council does not take action necessary to implement the agreement, or a part of it; or

(2) Sufficient funds are not appropriated for any fiscal year [in which] when the agreement is in effect.

[(k)] (l) The Council [shall] must take [whatever actions it considers] any action required by the public interest with respect to [matters] any matter still in dispute between the parties. However, [those actions shall not be] any action taken by the Council is not part of the agreement between the parties unless the parties specifically incorporate [them] it in the agreement.

*Approved:*

/S/

3/9/00

Michael L. Subin, President, County Council

Date

237 *Approved:*

238	/S/	3/16/00
	Douglas M. Duncan, County Executive	Date

239 *This is a correct copy of Council action.*

240	/S/	3/21/00
	Mary A. Edgar, CMC, Clerk of the Council	Date